

Senate File 499

H-1316

Amend the amendment, H-1299, to Senate File 499, as passed by the Senate, as follows:

1. Page 24, by striking line 11 and inserting <of the succeeding fiscal year.

DIVISION

MISCELLANEOUS PROVISIONS — WAGE PAYMENT COLLECTION

Sec. _____. Section 91A.5, subsection 1, unnumbered paragraph 1, Code 2015, is amended to read as follows:

An employer shall have the burden to establish that a deduction from employee wages is lawful. An employer shall not withhold or divert any portion of an employee's wages unless:

Sec. _____. Section 91A.5, subsection 1, paragraph b, Code 2015, is amended to read as follows:

b. The employer ~~has~~ obtains advance written authorization from the employee to so deduct for any lawful purpose accruing to the benefit of the employee.

Sec. _____. Section 91A.6, subsection 1, Code 2015, is amended to read as follows:

1. An employer shall ~~after being notified by the commissioner pursuant to subsection 2~~ do the following:

a. Notify its employees in writing at the time of hiring what wages and regular paydays are designated by the employer.

b. Notify its employees in writing whose wages are determined based on a task, piece, mile, or load basis about the method used to calculate wages and when the wages are earned by the employees.

~~b. c.~~ c. Notify, at least one pay period prior to the initiation of any changes, its employees of any changes in the arrangements specified in this subsection ~~that~~ that reduce wages or alter the regular paydays. The notice shall either be in writing or posted at a place where employee notices are routinely posted.

~~c. d.~~ d. Make available to its employees upon written request, a written statement enumerating employment agreements and policies with regard to vacation pay, sick leave, reimbursement for expenses, retirement benefits, severance pay, or other comparable matters with respect to wages. Notice of such availability shall be given to each employee in writing or by a notice posted at a place where employee notices are routinely posted.

~~d. e.~~ e. Establish, maintain, and preserve for three calendar years the payroll records showing the hours worked, wages earned, and deductions made for each employee and any employment agreements entered into between an employer and employee. Failure to do so shall raise a rebuttable presumption that the employer did not pay the required minimum wage under section

1 91D.1.

2 Sec. _____. Section 91A.6, subsection 2, Code 2015,
3 is amended by striking the subsection.

4 Sec. _____. Section 91A.6, subsection 4, Code 2015,
5 is amended by striking the subsection and inserting in
6 lieu thereof the following:

7 4. a. On each regular payday, the employer shall
8 send to each employee by mail or shall provide at the
9 employee's normal place of employment during normal
10 employment hours a statement showing the wages earned
11 by the employee, the deductions made for the employee,
12 and the following information, as applicable:

13 (1) For each employee paid in whole or in part on
14 an hourly basis, the statement shall show the hours the
15 employee worked.

16 (2) For each employee paid based on a percentage of
17 sales or based on a percentage of revenue generated for
18 the employer, the statement shall include a list of the
19 amount of each sale or the amount of revenue during the
20 pay period.

21 (3) For each employee whose pay is based on the
22 number of miles or loads performed, the statement shall
23 include the applicable number performed during the pay
24 period.

25 b. An employer who provides each employee access to
26 view an electronic statement of the employee's earnings
27 and provides the employee free and unrestricted access
28 to a printer to print the employee's statement of
29 earnings, if the employee chooses, is in compliance
30 with this subsection.

31 Sec. _____. Section 91A.8, Code 2015, is amended to
32 read as follows:

33 **91A.8 Damages recoverable by an employee.**

34 When it has been shown that an employer has
35 ~~intentionally~~ failed to pay an employee wages or
36 reimburse expenses pursuant to section 91A.3, whether
37 as the result of a wage dispute or otherwise, the
38 employer shall be liable to the employee for any the
39 unpaid wages or unreimbursed expenses ~~that are so~~
40 ~~intentionally failed to be paid or reimbursed~~, plus
41 liquidated damages, court costs, and any ~~attorney's~~
42 attorney fees incurred in recovering the unpaid wages
43 or unreimbursed expenses and determined to have been
44 usual and necessary. ~~In other instances the employer~~
45 ~~shall be liable only for unpaid wages or expenses,~~
46 ~~court costs and usual and necessary attorney's fees~~
47 ~~incurred in recovering the unpaid wages or expenses.~~

48 Sec. _____. Section 91A.9, subsection 3, Code 2015,
49 is amended to read as follows:

50 3. The commissioner may employ such qualified

1 personnel as are necessary for the enforcement of this
2 chapter. Such personnel shall be employed pursuant
3 to chapter 8A, subchapter IV. The commissioner shall
4 employ wage investigators for the enforcement of this
5 chapter.

6 Sec. _____. Section 91A.9, Code 2015, is amended by
7 adding the following new subsection:

8 NEW SUBSECTION. 4A. The commissioner shall
9 establish a statewide, toll-free telephone hotline for
10 the purpose of receiving reports of violations of this
11 chapter.

12 Sec. _____. Section 91A.10, subsection 5, Code 2015,
13 is amended to read as follows:

14 ~~5. An employer shall not discharge or in any other~~
15 ~~manner discriminate against any employee because the~~
16 ~~employee has filed a complaint, assigned a claim, or~~
17 ~~brought an action under this section or has cooperated~~
18 ~~in bringing any action against an employer.~~

19 5. a. An employer or other person shall not
20 discharge or in any other manner discriminate or
21 retaliate against any of the following:

22 (1) An employee or other person for exercising any
23 right provided under this chapter or any rules adopted
24 pursuant to this chapter.

25 (2) Another employee or person for providing
26 assistance to an employee or providing information
27 regarding the employee or person.

28 (3) Another employee or person for testifying or
29 planning to testify in any investigation or proceeding
30 regarding the employee or person.

31 b. Taking adverse action against an employee or
32 other person within ninety days of an employee's or
33 other person's engaging in any of the activities in
34 paragraph "a" raises a presumption that such action was
35 retaliation, which may be rebutted by evidence that
36 such action was taken for other permissible reasons.

37 c. Any employee may file a complaint with the
38 commissioner alleging discharge, ~~or~~ discrimination,
39 or retaliation within thirty days after such
40 violation occurs. Upon receipt of the complaint, the
41 commissioner shall cause an investigation to be made
42 to the extent deemed appropriate. If the commissioner
43 determines from the investigation that the provisions
44 of this subsection have been violated, the commissioner
45 shall bring an action in the appropriate district court
46 against such person. The district court shall have
47 jurisdiction, for cause shown, to restrain violations
48 of this subsection and order all appropriate relief
49 including rehiring or reinstatement of the employee to
50 the former position with back pay.

1 Sec. _____. Section 91A.10, Code 2015, is amended by
2 adding the following new subsection:

3 **NEW SUBSECTION. 6.** A civil action to enforce
4 subsection 5 may also be maintained in any court of
5 competent jurisdiction by the commissioner or by any
6 party injured by a violation of subsection 5. An
7 employer or other person who retaliates against an
8 employee or other person in violation of subsection 5
9 shall be required to pay the employee or other person
10 an amount set by the commissioner or a court sufficient
11 to compensate the employee or other person and to deter
12 future violations, but not less than one hundred fifty
13 dollars for each day that the violation occurred.

14 Sec. _____. **NEW SECTION. 91A.12A Erroneous**
15 **violations.**

16 If an employer erroneously violates the provisions
17 of this chapter or the rules adopted pursuant to this
18 chapter, the employer shall not be subject to liability
19 to an employee pursuant to section 91A.8, the violation
20 shall not constitute an enforceable claim as provided
21 in section 91A.10, and the employer shall not be
22 subject to a civil money penalty pursuant to section
23 91A.12, if all of the following conditions are met:

24 a. The commissioner determines that the violation
25 was erroneous and that the employer attempted in good
26 faith to comply with the provisions of this chapter and
27 the rules adopted pursuant to this chapter.

28 b. The commissioner, after considering any history
29 of violations of this chapter or the rules adopted
30 pursuant to this chapter by the employer, determines
31 that the violation was isolated in nature.

32 c. The employer corrects the violation to the
33 satisfaction of the labor commissioner within fourteen
34 days of the occurrence of the violation.

35 Sec. _____. **NEW SECTION. 91A.15 Commissions earned**
36 **date.**

37 An employer shall not require that a person be a
38 current employee to be paid a commission that the
39 person otherwise earned.

40 Sec. _____. **NEW SECTION. 91A.16 Inconsistency with**
41 **federal law.**

42 A provision of this chapter shall not apply to any
43 employer or employee if such provision would conflict
44 with federal law or regulation.

45 Sec. _____. **NOTIFICATION REQUIREMENTS.** The labor
46 commissioner shall provide for the notification of
47 each employer in this state of the requirements for
48 employers provided in this division of this Act by
49 September 1, 2015. Such notification shall include
50 suggested forms and procedures that employers may

1 use for purposes of compliance with the notice and
2 recordkeeping requirements of section 91A.6, as amended
3 by this division of this Act.

4 Sec. _____. EFFECTIVE DATE. This division of this
5 Act takes effect January 1, 2016.>>

6 2. Page 24, lines 13 and 14, by striking
7 <institutions, and> and inserting <institutions,
8 providing penalties and remedies,>

9 3. Page 24, line 14, after <atters> by inserting
10 <, and including effective date provisions>

11 4. By renumbering, redesignating, and correcting
12 internal references as necessary.

HUNTER of Polk